

# Exhibit D

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

|                              |   |                                    |
|------------------------------|---|------------------------------------|
| SOVERAIN SOFTWARE LLC,       | ) |                                    |
|                              | ) |                                    |
| Plaintiff,                   | ) |                                    |
|                              | ) |                                    |
| vs.                          | ) |                                    |
|                              | ) |                                    |
| CDW CORPORATION, NEWEGG      | ) | Civil Action No. 6:07-CV-00511-LED |
| INC., REDCATS USA, INC.,     | ) |                                    |
| SYSTEMAX INC., ZAPPOS.COM,   | ) |                                    |
| INC., REDCATS USA, L.P., THE | ) |                                    |
| SPORTSMAN'S GUIDE, INC., and | ) |                                    |
| TIGERDIRECT, INC.,           | ) |                                    |
|                              | ) |                                    |
| Defendants.                  | ) |                                    |
|                              | ) |                                    |

**DEFENDANTS CDW CORPORATION, NEWEGG INC.  
AND ZAPPOS.COM, INC.'S INVALIDITY CONTENTIONS**

Pursuant to Patent Rule 3-3, Defendants CDW Corporation, Newegg Inc., Zappos.com, Inc., a California corporation ("Zappos-CA"), and Zappos.com, Inc., a Delaware corporation ("Zappos-DE") (collectively, "Defendants") hereby serve Plaintiff Soverain Software LLC ("Plaintiff") with their Invalidity Contentions for the claims of U.S. Patent Nos. 5,715,314 (the "314 patent"), 5,909,492 (the "492 patent") and 7,272,639 (the "639 patent") (collectively, the "patents in suit") that Soverain has asserted in its Disclosure of Asserted Claims and Infringement Contentions.

Defendants provide these Invalidity Contentions based on the claims and positions Soverain has asserted in its Disclosure of Asserted Claims and Infringement Contentions and its discovery responses. Defendants reserve the right to seek leave of Court to supplement or amend these contentions based on any supplements or

these contentions, under the Patent Rules or by seeking leave of Court, based on the Court's claim construction order.<sup>1</sup>

Defendants provide these Invalidity Contentions in the absence of a determination from the Court regarding the applicable priority date(s) of the asserted claims.

Defendants reserve the right to seek leave of Court to supplement or amend these contentions based on such a determination. Defendants also reserve the right to establish that any prior art reference has an earlier priority date than is indicated herein.

Defendants provide these Invalidity Contentions despite their objections to Soverain's Disclosure of Asserted Claims and Infringement Contentions. These contentions should not be construed as a waiver by Defendants of any of those objections or that Defendants believe that Soverain's Disclosure of Asserted Claims and Infringement Contentions is adequate or proper.

Defendants incorporate by reference herein all prior art identified, invalidity contentions and supporting documentation served by any other party to this lawsuit, including the invalidity contentions served by Systemax and TigerDirect, or to any prior litigation in which these patents have been asserted, including all invalidity contentions served by Amazon.com, Inc. in Case No. 6:04 cv 14 (E.D. Texas) and all invalidity contentions reflected in the reports of Amazon's experts in that case, including those of Alexander Trevor and Richard Taylor.

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<sup>1</sup> In addition, Defendants reserve the rights to modify and/or amend their defenses based upon future decisions of the Federal Circuit Court of Appeals in, among other cases, *In re Bilski* and *Aristocrat Technologies v. International Game Technology*, No. 2008-1016 (Fed. Cir.)

| Title, Author(s), Publisher  | Date     | Production Number          |
|--|----------|----------------------------|
| "How to maintain state: ANSWERS" web thread, Bich-Cau Le   | 09/02/94 | CNZ0010935                 |
| "How to get the most out of CompuServe, 4th Ed." Charles Bowden and David Peyton. Bantam Books.  | 1989     | CNZ0009418-<br>CNZ0009911  |
| "Handbook of Relational Database Design," Candace C. Fleming and Barbara von Halle.  | 1989     | CNZ0014290-<br>CNZ0014899  |
| "GENVL and www: tools for taming the web," Oliver McBryan.   | 05/94    | CNZ0013904-<br>CNZ0013915  |
| "For Advertisers, Tapping into On-Line services is harder than it looks," Steve Higgins, Investor's Business Daily.  | 04/07/94 | CNZ0010345                 |
| "FastCGI: A High-Performance Web Server Interface" flyer (Andrew Payne)  | 04/96    | CNZ0013726-<br>CNZ0013732  |
| "Doing Business on the Internet: How the Electronic Highway is Transforming American Companies," Mary J. Cronin.   | 12/08/93 | CNZ0024221-<br>CNZ0024534  |
| "Cyberspace Development: Builders of Internet Storefronts" chat group chain (Andrew Currie) from "Alt.Internet.Services"   | 11/22/93 | CNZ0013802-<br>CNZ0013803  |
| "CUC International" Wikipedia page   | 05/22/08 | CNZ0013799-<br>CNZ0013801  |
| "CUC International Acquires Netmarket Company A Leader In Bringing Commerce to the Internet, Acquisition to bring CUC Services and Marketing Partners to the Internet early 1995," Business Wire, November 15, 1994. | 11/15/94 | CNZ0010368 -<br>CNZ0010384 |
| "Conceptual Database Design: An Entity-Relationship Approach," Batini Ceri Navathe   | 1992     | CNZ0014900-<br>CNZ0015390  |
| "Client-server database query" comp.databases message thread, Johan Svensson and Mike Kiley  | 05/19/94 | CNZ0013868-<br>CNZ0013869  |

| Items offered for sale/publicly used | Dates of sale/public use   | Person or entity which received the offer/made the public use   | Person or entity which made the information known or to whom it was made known |
|--------------------------------------|--|---|--|
| CompuServe Travelshopper             | Defendants presently do not know the dates of first sale or first public use, but believe those dates to be on or before 1980, with access via TCP/IP on or before March 24, 1994. | Defendants presently do not know the full range of all persons or entities which received the offer(s) or made the public use(s), but believe those persons and entities included, at a minimum, Alexander Trevor, and employees, agents, representatives, and/or contractors of CompuServe, and employees, agents, representatives, and/or contractors of Worldspan (known as PARS), Delta, Northwest, TWA or Delphi.      | Same.  |
| Condom Country website               | Defendants presently do not know the dates of first sale or first public use, but believe those dates to be on or before June 20, 1994.  | Defendants presently do not know the full range of all persons or entities which received the offer(s) or made the public use(s), but believe those persons and entities included, at a minimum, Robert Ramstad, Albert Coulson, and employees, agents, representatives, and/or contractors of condomcountry.com, and owners and employees of New Frontiers Information Corporation, the Access Group, and Christian Hamer. | Same.  |

| Items offered for sale/publicly used                                     | Dates of sale/public use   | Person or entity which received the offer/made the public use   | Person or entity which made the information known or to whom it was made known |
|--|--|---|--|
| CompuServe's Electronic Mall, with shopping from more than 120 merchants | Defendants presently do not know the dates of first sale or first public use, but believe those dates to be on or before 1986.     | Defendants presently do not know the full range of all persons or entities which received the offer(s) or made the public use(s), but believe those persons and entities included, at a minimum, owners, agents, employees, representatives or contractors of CompuServe, and the representative stores available through the CompuServe Electronic Mall. | Same.  |
| Stuff.com  | Defendants presently do not know the dates of first sale or first public use, but believe those dates to be on or before May 1994. | Defendants presently do not know the full range of all persons or entities which received the offer(s) or made the public use(s), but believe those persons and entities included, at a minimum, R. Scott Boake, Brooks Cutter, and Michael Wolke.  | Same.  |

purchased by numerous customers and stored that input pending confirmation of that purchase. *See* Exhibit A. There are numerous other prior art examples of order entry systems that employ interim storage of user selections for the advantages identified above, among others. *See, e.g.*, U.S. Pat. Nos. 4,073,368, 4,484,304, 4,887,208, 4,931,932, 4,959,686, 4,972,318, 4,984,155, 5,047,614, 5,285,383, 5,592,378, 5,664,111, 5,734,719 and 5,848,399.

Numerous online shopping services and systems conceived, in use and disclosed prior to the filing of the relevant applications similarly employed a collection of “carts” to store items selected by a customer prior to purchase. As an example, the CompuServe system permitted customer selection of a plurality of items by means of modification of a database prior to purchase. Publications concerning the CompuServe system at least inherently disclose the use of such a database, or, alternatively, the presence and use of such a database would have been obvious to one of ordinary skill in the art in light of descriptions such as the following, among others, and in light of the known advantages of databases in such applications:<sup>8</sup>

Each product is designated with a number. . . . The Order command functions the same way for each store, but merchants may vary in payment and delivery options. Some merchants also offer extended warranty options. Again, pay attention to these options. When you find a product that you want to buy, press O for order. **Your**

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<sup>8</sup> According to Soverain, a system’s display of a summary reflecting the user’s previous selections is sufficient proof of the presence of a shopping cart database and a shopping cart computer. *See, e.g., Soverain Infringement Contentions re CDW.com* at 2-3. Soverain also asserts that a person of ordinary skill in the art would see no acceptable alternative to the use of a database in this fashion in connection with the use of an electronic shopping cart. *See Soverain’s Responses to First Set of Interrogatories*, Interrog. No. 6.

**order will be stored in a personal holding file until you leave that merchant's store.**

Press R to continue browsing the store in which you just placed the order. You can place as many orders in the store as you want. When you are finished shopping in that store, type checkout. An electronic order form appears.

During the order completion process, you are asked to specify your name, address, phone number, payment method, and delivery method. Next you see an order summary; you have the option of changing any of your order at this point. You can cancel the order at any time by typing exit at any prompt on the order form.

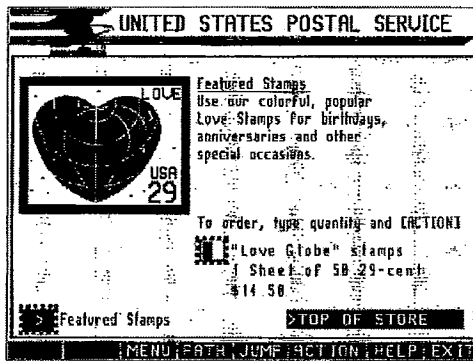
After you indicate that your order is correct and complete, you automatically receive a confirmation number.

Ellsworth, J., *Using CompuServe, The Comprehensive Guide to all the Online Services and Resources Available*, Que Corp. (1994) at 376 (emphasis added); *see also* Kane, Pamela, *The Hitchhiker's Guide to the Internet*, MIS Press, 1994, at 257 ("Shopping GENie is like visiting the supermarket. You pick up items along the way by answering Y to the 'Order Y/N' prompt. You can look inside your shopping basket by entering Display at almost any time. You can Remove items from your basket or Empty the shopping basket completely."); *Quill Service Link (QSL): Your Electronic Connection to Superior Service and the Best Values in Office Products*, Quill Corporation, 1988, at 28, 30 (Quill Service Link system allowed users to review a listing of selected items for purchase prior to completing an order); Lewis, Peter H., *Company News: Food from cyberspace; for Ameritech, On-Line food shopping*, N.Y. Times, Sept. 1, 1994, 1 (noting that Peapod service permitted use of a personal computer connected over a public network to select grocery items for purchase and review the stored list prior to purchase); *see also* Prodigy, NECX, First Virtual, VVV, AOL, NetMarket, Pizza Hut,



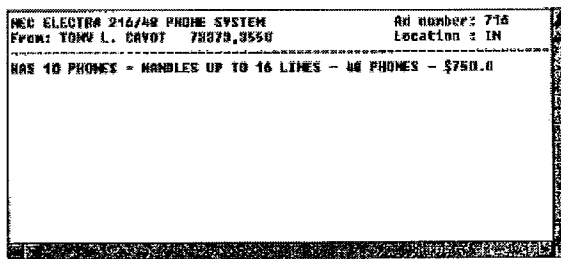
construed, the use of digital advertising documents provided to a client computer was well-known in the art.

As previously mentioned, the use of dial-up network connections and the Internet as a marketplace for the sale of products was growing in the early 1990s and multiple companies were already using digital advertising documents. Online shopping services were available through, among other sources, Prodigy, CompuServe and America Online. Each of these online shopping services used digital advertising documents to describe the products offered for sale. Exemplary screen shots of the digital advertising documents used by companies on Prodigy including Sam Goody, Sears, Connections, PC Flowers, the United States Postal Service, and even individual sellers using the USA Today classified advertisements can be found in the Official Guide to the Prodigy Service, among other sources. *See Viescas, John L., The Official Guide to the Prodigy Service*, 1991, at 208-245. Sample screen shots of digital advertisement documents used on CompuServe including classified advertisements and product descriptions from stores included in the CompuServe Electronic Mall, are available in *Using CompuServe*. Ellsworth, Jill and Matthew, *Using CompuServe*, 1994, 351, 422. Among travel services such as Eaasy Sabre, digital advertising documents were used to describe the airfare, hotel rooms and car rentals available for purchase. Exemplary screenshots from many of these merchants are included in the table below.

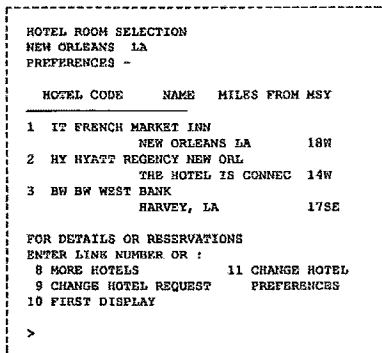


**Figure 6-23.**  
*Shopping for postage stamps.*

Official Guide to the  
Prodigy Service at 235.



CompuServe classified  
ad, Using CompuServe at  
351.



How to Get the Most Out  
of CompuServe at 345.

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s/ Thomas L. Duston

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ZAPPOS.COM, INC. (a California  
corporation), ZAPPOS.COM, INC.  
(a Delaware corporation), CDW  
CORPORATION and NEWEGG, INC.

## U.S. Patent 5,715,314 – Invalidity Contentions

## EXHIBIT A

| <u>Claim</u>  | <u>A</u>  | <u>B</u>  |
|---|---|---|
| 34. A network-based sales system, comprising:                                 |   |   |
| at least one buyer computer for operation by a user desiring to buy products; | <p>Trewitt, Glenn, "Using Tcl to Process HTML Forms," Digital Equipment Corporation Network Systems Laboratory, March 1994, <i>see, e.g.</i>, 1, 5, 25-26; <i>see, also</i>, CNZ0008832-8859.</p> <p>* 4,073,368 (Mustapick), <i>see, e.g.</i>, abstract, col. 1:63-65, 3:47-50, claim 1, Figs. 2, 7.</p> | <p>Sheerin, Peter K., "Transactional Services on WWW" Google Groups Usenet entry, May 19, 1994, <i>see, e.g.</i>, 3-4.</p> <p>Digital Equipment Corporation, <i>see, e.g.</i>, Belsie, Laurent, "Powerful Internet Should Skyrocket as Firms Go On-Line," Christian Science Monitor, March 16, 1994, 1-2.</p> |

<sup>1</sup> Documents bearing the "AMZ-S-" number are documents produced by Sovereign as deposition exhibits to the deposition of Kohn on Feb. 1, 2005.

<sup>2</sup> Documents bearing the "AMZ-S-" number are documents produced by Sovereign as deposition exhibits to the deposition of Kohn on Feb. 1, 2005.

<sup>3</sup> Documents bearing the "TS2-" number are documents produced by Sovereign as deposition exhibits to the deposition of Michael Kuniavsky on Feb. 22, 2005.

\* References marked with an "\*" considered listed in "Column B" with respect to '492 patent claims 17, 18, 35 and 36.

+ References marked with an "+" considered listed in "Column B" with respect to '492 patent claims 17 and 18.

## U.S. Patent 5,715,314 – Invalidity Contentions

| <u>Claim</u> | <u>A</u>  | <u>B</u>   |
|--------------|---|--|
|              | <p>+ CompuServe, <i>see, e.g.</i>, Bowen, Charles and Peyton, David, “How to get the most out of CompuServe, 4th Ed.” Bantam Books, 1989, 4, 180, 313-322, 330-346; CompuServe Information Services User’s Guide (“CIS User’s Guide”), CompuServe International, 1986, 109-113; Higgins, Steve, “For Advertiser’s, Tapping Into On-Line Services Is Harder Than It Looks,” Investor’s Business Daily, April 7, 1994, Executive Update, 1; “I Didn’t Know You Could Do That on CompuServe!”, CompuServe Incorporated, 79; Hickey, Mary, “Shopping at home: one modem line, no waiting (On-Line Connections – Exploring the Information Highway),” HOME PC, Dec. 1, 1994, 2; <i>see also</i>,</p> | <p><b>5,347,632 (Filepp)</b>, <i>see, e.g.</i>, abstract, 1:31, 2:35, 4:14, 95:66-96:1, Fig. 2; <i>see also</i>, CNZ0008832-8859.</p> <p><b>Cronin</b>, Mary J., “Doing Business on the Internet,” Van Nostrand Reinhold, Dec. 8, 1993, <i>see, e.g.</i>, 189, 200.</p> <p><b>Sabre</b>, <i>see, e.g.</i>, Plugge, W.R. and Perry, M.N., “American Airlines’ ‘Sabre’ Electronic Reservations System,” paper presented at the joint IRE-AIEE-ACM computer conference, Proceedings of the Western Joint Computer Conference, Los Angeles, CA, May 9-11, 1961, 596-597.</p> <p><b>U.S. Patent No. 5,047,614 (Sep. 10, 1991) (Bianco)</b> (“‘614 patent”), <i>see, e.g.</i>,</p> |

<sup>4</sup> Documents bearing the “TS2-” number are documents produced by Sovereign as deposition exhibits to the deposition of Michael Kuniavsky on Feb. 22, 2005.

\* References marked with an “\*” considered listed in “Column B” with respect to ‘492 patent claims 17, 18, 35 and 36.

+ References marked with an “+” considered listed in “Column B” with respect to ‘492 patent claims 17 and 18.

## U.S. Patent 5,715,314 – Invalidity Contentions

| <u>Claim</u> | <u>A</u>   | <u>B</u>  |
|--------------|--|---|
|              | <p>CNZ0008870-8875.</p> <p>+Ellsworth, J., Using CompuServe (Que Corp. (Mar. 1994): <i>see, e.g.</i>, pp. 19-20, 375-76.</p> <p>*4,484,304 (Anderson), <i>see, e.g.</i>, abstract, 3:53, 4:40, claims 1, 6.</p> <p>*4,959,686 (Spallone), <i>see, e.g.</i>, 2:5-7, 3:48, 58, 4:12-15, 6:63-65, claim 1, Fig. 2.</p> <p>+5,285,383 (Lindsey), <i>see, e.g.</i>, 3:51-53, 22:24-31, Fig. 1.</p> <p>+Eaasy Sabre, <i>see, e.g.</i>, Eaasy Sabre User's Guide ("ESUG"), 2-6; "I Didn't Know You Could Do That on CompuServe!", CompuServe, Incorporated, 119; Eaasy Sabre subscriber letter from E. Adams, June 7, 1989, 1; Sabre with Windows, version 1 User's</p> | <p>2:50-3:9.</p> <p>U.S. Patent No. 4,931,932 (Jun. 5, 1990) (Dalnekoff) ("932 Patent"), <i>see, e.g.</i>, 3:3-12.</p> <p>U.S. Patent No. 5,712,989 (Jan. 27, 1998) (Johnson) ("989 patent"), <i>see, e.g.</i>, Abstract, 2:5-9; 2:62-67; 3:56-60; 4:4-14; 6:43-47.</p> <p>U.S. Patent No. 6,199,051 (Mar. 6, 2001) (Gifford) ("051 patent"), <i>see, e.g.</i>, Abstract, 3:15-27.</p> <p>Hughes, K. <i>Entering The World-Wide Web: A Guide to Cyberspace</i> (Mar. 1994), <i>see, e.g.</i>, pp. 1-2.</p> <p>First Virtual, <i>see, e.g.</i>, First Virtual Corporate Brochure ("FV Brochure"), October 1994, 2.</p> |

\* References marked with an "\*" considered listed in "Column B" with respect to '492 patent claims 17, 18, 35 and 36.

+ References marked with an "+" considered listed in "Column B" with respect to '492 patent claims 17 and 18.